THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 16123 of 2006

DATED: 08-09-2006

Between:

Y.L.Seshagiri Rao.

..petitioner

And

The Vice Chairman and Managing Director, APSRTC ,
Musheerabad, Hyderabad and another.

..Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

WRIT PETITION NO. 16123 of 2006

ORDER:

The petitioner worked as Driver with the respondents-APSRTC. While discharging his duties as Driver at Machilipatnam Depot, he was involved in a major accident and sustained severe injuries to his right leg. As a result of the injuries sustained by him in the accident, he was declared unfit for A1 category post and was retired from service, vide order dated 24.09.2001 on medical grounds, in terms of Item No.6A-4 of the APSRTC (Service) Regulations, 1964, with effect from 03.09.2001. Aggrieved by the said order, he preferred an appeal on 23.10.2001 before the 1st respondent. Since the said appeal was not considered, he filed W.P. No. 5279 of 2006 and the same was disposed of on 20.03.2006 with a direction to the petitioner to file an appeal before the 2nd respondent-Divisional Manager, Vijayawada, within four weeks from that day. Accordingly, he filed fresh appeal on 10.04.2005 before the 2nd respondent seeking alternative employment. The 2nd respondent, vide impugned order dated 5.6.2006, rejected his claim for alternative employment. The petitioner claims that as per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act 1 of 1995 (for short 'the Act'), he is entitled to alternative employment and the respondents, without considering his case as per the said Section, retired him from service, which is illegal and arbitrary. Hence, the present writ petition.

2. Learned counsel for the petitioner submitted that in terms of Section 47 of the Act, the respondents are under an obligation to provide alternative employment and placed reliance on the judgment of this Court in ***N.Siva Kumar Vs. APSRTC, Musheerabad***[1].

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

4. The Apex Court in ***KUNAL SINGH Vs. UNION OF INDIA*** [2] held that the very frame and contents of section 47 of the Act are mandatory in nature and in the event the employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits. This Court in ***N.Siva Kumar's*** case directed the authorities to consider the case of the employee in the light of the provisions of the Act for alternative employment.

5. A perusal of the impugned order dated 5.6.2006 would indicate that the claim of the petitioner for alternative employment was rejected due to non arising of any alternative post during the one year period from the date of his unfitness, and ultimately, on humanitarian grounds, he was provided with financial assistance at Rs.95,811/- to meet the medical expenses and Rs.90,989/-

under the Workmen Compensation Act. On these grounds, the respondents cannot shirk their responsibility to provide alternative employment to the petitioner under section 47 of the Act, which is mandatory in nature.

6. The respondents ought to have taken appropriate steps to accommodate the petitioner in any alternative employment in terms of Section 47 of the Act The Apex Court in ***Kunal Singh's case*** **(2 supra)**, specifically held that the very frame and contents of section 47 of the Act clearly indicate its mandatory nature and an employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act.

In the circumstances, the petitioner is directed to make an application before the respondents seeking alternative employment as per Section 47 of the Act, and on such application being filed, the respondents shall consider the case of the petitioner and pass appropriate orders in terms of section 47 of the Act, expeditiously.

7. With the above direction, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Date:08.09.2006

sj

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[1] 2001 (3) ALD 166 (DB)

[2] AIR 2003 SC 1623